

The Planning & Zoning Commission of the City of Fairhope met January 5, 2009 at the City Administration Building, 161 N. Section Street in the Council Chambers.

Present: Jean Wilson, Chairman; Members: Tim Kant, Jennifer Fidler, Bob Clark, Dick Charles, Lee Turner, Gary Moore, Fran Slade, Dan Stankoski. Planning staff: Gregg Mims, Jonathan Smith, Nancy Milford; Chris Gill, Attorney and Betty Rivenbark, Secretary

The minutes of the December 1, 2008 meeting were considered with amendments presented and a motion was made by Dick Charles to approve as amended, Lee Turner 2<sup>nd</sup> the motion and it carried unanimously.

**SD07.27 Minor Plat approval of Sedera Darby Subdivision**

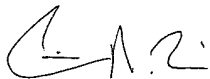
(Resubdivision of Lot 3, Block 3, Bay Meadows). Three lots are proposed. The property is generally located on the south side of Derby Lane, just east of Thompson Hall Road. It was noted for the record Fran Slade had a conflict with this item and left the room. Chris Gill attorney for the City read a statement as shown below regarding the litigation of this subdivision:

January 5, 2009

Planning Commission President Jean Wilson  
Planning Commission Members

As attorney for the Planning and Zoning Commission of the City of Fairhope, Alabama (the "Commission"), I, Christopher M. Gill, an attorney licensed to practice law in the State of Alabama, hereby request that the Commission go into Executive Session during the regular meeting of the Commission on Monday, January 5, 2009 (the "Meeting"). The purpose of said Executive Session is so that I may advise the Commission members regarding the pending litigation matter of *Darby v. The Fairhope Planning and Zoning Commission*, Civil Action No. 2007-900693 in the Circuit Court of Baldwin County, Alabama. The discussion that I plan to have with the members of the Commission is subject to the exception from the Alabama Open Meetings Act set forth at *Alabama Code* § 36-25A-7(a)(3) (1975).

I hereby submit this document to the Secretary of the Commission for inclusion with the minutes of the Meeting.



Christopher M. Gill, Attorney for the  
City of Fairhope Planning Commission

Dick Charles moved to go into executive session, Lee Turner 2<sup>nd</sup> the motion and the vote was: Tim Kant, AYE; Jennifer Fidler, AYE; Bob Clark, AYE; Fran Slade, AYE; Jean Wilson, AYE; Dick Charles, AYE; Lee Turner, AYE; Gary Moore, AYE; Dan Stankoski, AYE; They left the room at 5:05 PM for a 10 minute session. They reentered the room at 5:13 PM. Lee Turner moved to resume the meeting. Dick Charles 2<sup>nd</sup> the motion and it carried unanimously. Dick Charles moved to reconsider SD07.27 Dan Stankoski 2<sup>nd</sup> the motion and it carried unanimously. Ms. Wilson said she had several

people sign up to speak: Joe and Abby Scott of 9599 Derby Lane, had pictures they passed out and said when they bought their property 20 years ago and moved to Derby Lane they were large two acre lots with covenants, that if this is subdivided it will put a house within 16 ft of his fence and house. Thomas Garrick had signed up to speak but did not, Mark Roshetko of 9727 Derby Lane said he is east of Ms. Darby, they have been neighbors for 12 years and has been a good neighbor. He said specific to the neighborhood that lots cannot be subdivided unless the roads have been accepted, have they been accepted or will Mr. Ripp have to do the improvements. Chris Gill commented for public record that restrictive covenants are a private party issue and not part of this. Jennifer Fidler responded, in answer to Mr. Roshetko's question, that the roads have been accepted by the city. Mr. Ripp was asked if he wanted to speak and he asked what was the city's position, Jean Wilson said they had no position, that they stood by their recommendation of August 6, 2007..the public hearing was closed. Lee Turner moved for acceptance per staff recommendation, Dick Charles 2<sup>nd</sup> the motion and it carried unanimously.

**IR09-01 Informal Review of a propose PUD request of J. Myles Reed** for property located at 8174 Gayfer Avenue, located on the south side just east of Greeno Road. The site contains 10.1 acres and is zoned R-5. This was considered by the Planning Commission in October '05 and sent to the City Council with an unfavorable recommendation based on the residents and commissioners agreeing that they would rather have R-4 zoning. The City Council sent it back to the Planning Commission and ultimately in March of '06 the City Council approved rezoning from R-1 to R-5 with the following conditions: 1. limiting the development to 62 units; 2. maintaining a maximum of 4 units per building and 3. building a privacy fence along the southern boundary of the property. It is back tonight as they are considering rezoning from R-5 to PUD and the applicant's PUD application includes professional/medical offices. In staff comments it was stated that the city has concerns locating medical offices in this location, and staff's opinion is that ten acres of medical park and office would not be a compatible development pattern with the surrounding properties and does not meet the intent of the comprehensive plan. Staff recommendation was to provide insight and comment regarding the proposed PUD. J. Myles Reed spoke to the members saying he met with Gregg and Jonathan and they suggested he come talk to the commission regarding these plans. He said the PUD would have covenants and restrictions, architectural control, and that they are talking to three doctor groups. He had a drawing of a possible layout for the buildings on the property which was shown on the screen. The commission was asked for opinions: Tim Kant said he is still listening; Jennifer Fidler

said she is not opposed; Mr. Reed showed what was approved before and said what they are proposing is half of that; he said they talked to surrounding residents and most agreed that office space is better than apartments with 8-5 traffic rather than 62 families. Bob Clark said this is dejavu, like this just happened 1 ½ years ago and here we are again, he said he looked at the property over the weekend and he is less than enthusiastic about it, and that the project in that location is not a compatible use, not meet comprehensive plan. Fran Slade said that at one time we talked about a hospital overlay including medical groups; she would like to see that before we permit another structure/group, she asked Gregg if there was a time frame for the overlay to be presented. Dick Charles said the plans accommodate Medical Park OB/GYN, what about other buildings, how long before they would be filled. Mr. Reed said that Medical Park OB/GYN is now considering just one building in the front of the property that he has also talked to a surgeon and consulting business for doctors. Mr. Charles said he concurs with other comments, need buffer zone and fence along residential property of Rosa Acres, doesn't know if a good mix. Bill Caswell gave out information and said this was what he had given to the residents of Rosa Acres. He said further that they have gone to less density. Dick Charles asked if this would be concurring or sequential construction. They answered that that Medical Park OB/Gyn would want to build their building right away as soon as roads are installed, others would be built later. Lee Turner said that he liked the layout with the buffer zone and all parking being in the interior of the property and use of pervious materials was suggested. He said he thinks we should concentrate on keeping the medical offices in Fairhope and mentioned Thomas Hospital and Grand Hotel as major employers. He said he would rather see offices here than in Daphne or Spanish Fort. Gary Moore said he voted against the orthopedic office, that it has changed things, things have changed, and he is not completely against the idea, open to discussion. He said that they can make it better, crunch numbers, that shielding neighbors and streets are significant issues. Dan Stankoski mentioned drainage and Mr. Reed said they would have the detention pond, that all of the surrounding property drains to them; pervious parking was suggested and he said he would be concerned with height, keep to what allowed, the buffer zones and aesthetics, not opposed, see what comes. Jean Wilson, said it is not necessarily a bad spot, similar to what across the street, likes the way they have it laid out. She mentioned height. Mr. Reed said they would limit the height, increase the setbacks and fence and landscaping buffers. He said they might not be able to do all pervious parking, that they have encountered problems with elderly patients on these surfaces, possibly some cement and some pervious. Jennifer asked how many residents did they contact and she was told the ones within

600 ft of the property. Mr. Reed said they would not build other buildings until they had tenants, but did want to build the interior road and the main building. Mayor Kant said this would be a zoning change so he recommended they talk to the City Council and get their input. Dr. Wells of Medical Park OB/GYN spoke to the group and said that originally they were part of the Bones and Babies application but once they got more into the issues involving the building of the current building that they would not have been able to have the space they needed or expand their practice which they would like to do. He said based on a survey done by Thomas Hospital they are the largest OB/GYN group in the County but at least 4-6 more Ob-Gyn doctors are needed. He went on to say they would build in line with what in the area and it would be attractive. They were told we appreciated them coming, work with the planning department and talk to City Council. Hop Allen asked about the power of a PUD and enforcement. Jean Wilson explained there are enforcement agencies within the City that address issues. Hop referenced the change of the plans for the parking lot at the Bones and Babies and paving. Lee Turner offered that they were not allowed to just pave, they came back and asked for a variance because of issues they had, but spent a lot more money in the long run putting in underground drainage system.

Old/new business – Bob Clark asked if we were working on the hospital overlay plan, what is the status. Jonathan answered this is a priority for staff and they would start working on it real soon.

The Commission was asked to hear a matter that was not on the agenda, an informal review. Fran Slade said she had a conflict with this matter and left. Thomas Toombes addressed the members saying his subdivision was approved a year and a half ago, Dogwood, and showed a drawing they had put out with different style homes that they felt were compatible with the neighborhood. Like everyone else, the economy has caught up with them. He said he met with Gregg to discuss some changes they wished to do and Gregg suggested he come up and talk to the Commission. He told where the subdivision is located and explained he had an individual that wanted to build a house that is 2500 sq ft. and build on piers; once they did the FFE with 9ft ceilings on the 1<sup>st</sup> floor and 2<sup>nd</sup> story they were talking about a 2 ft roof pitch. He said there are older homes in the neighborhood and they want to do something in character but the variances they need on setbacks and height are not hardships so he did not think the Board of Adjustments would approve them. He was wondering about resubmitting as a PUD. Bob Clark thanked him for making his point against PUD's he had commented that PUD's are a developer's dream come true. Jean asked the Commission members if they had any comments about granting PUD

status. Dick Charles told Thomas that the roof height is an issue that is now being discussed by the Mayor and Planning Department. Jennifer said we need to abide with the laws we have. Dan Stankoski said the City Council is now having an issue with building heights, that we need to be consistent, need a standard to follow from the Planning Department, need a yardstick. Jonathan said they are in the process now of trying to set up a meeting with architects, City Council, Mayor and Planning Staff. Thomas said that they were trying to also stay away from front entry garages, that was the reason for the 25' frontage request. It was stated they hated to see this come back as a PUD application for one house. Dick Charles said he did not see how they could not make recommendations without feedback. Bob Clark said we have standards, need to follow them, Jennifer concurred. Jean Wilson said building heights in town are a big issue. She recognizes that we are not in the 50's anymore, but we can't give the feedback he needs tonight until they get input. The Mayor said we need to be consistent, relook at PUD's go back and revisit the size allowed, when first approved they had to be 10 acres or more. Thomas said it sounds like he needs to go forward with the PUD because of building height and setbacks. Gregg commented that he feels if there is a consistent problem with a rule then he thinks it might be time to look at the rule. Two, he said we need to look at PUD's, we are the only one who approves three acre PUD's, that the City has benefited from PUD's, but some things need to be looked at.

There being no further business, meeting was duly adjourned at 6:23 PM.

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Jean Wilson, Chairman

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Betty Rivenbark, Secretary